

SENATE BILL No. 264

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-5-2-22; IC 3-10; IC 3-11-2-12; IC 36-1; IC 36-2; IC 36-9-13-2.

Synopsis: County executive. Provides that in counties other than Marion County, the boards of county commissioners are eliminated effective January 1, 2013, the county executive is a single elected chief executive officer, and the county council is the county legislative body as well as the county fiscal body. Provides that the initial county chief executive officers are elected at the November 2012 general election.

Effective: July 1, 2008.

Broden

January 10, 2008, read first time and referred to Committee on Local Government and Elections.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 264

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-5-2-22 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2008]: Sec. 22. (a) "Executive" means:

- 3 (1) **except as provided in subsection (b), the** board of county
4 commissioners, for a county not having a consolidated city;
5 (2) **the** mayor of the consolidated city, for a county having a
6 consolidated city;
7 (3) **the** mayor, for a city;
8 (4) **the** president of the town council, for a town; or
9 (5) **a** trustee, for a township.

10 **(b) In the case of a county subject to IC 36-2-2.5 after December**
11 **31, 2012, "executive" means the chief executive officer elected**
12 **under IC 3-10-2-13.**

13 SECTION 2. IC 3-10-1-19, AS AMENDED BY P.L.164-2006,
14 SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2008]: Sec. 19. (a) The ballot for a primary election shall be
16 printed in substantially the following form for all the offices for which
17 candidates have qualified under IC 3-8:



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OFFICIAL PRIMARY BALLOT

____ Party

For paper ballots, print: To vote for a person, make a voting mark (X or ✓) on or in the box before the person's name in the proper column. For optical scan ballots, print: To vote for a person, darken or shade in the circle, oval, or square (or draw a line to connect the arrow) that precedes the person's name in the proper column. For optical scan ballots that do not contain a candidate's name, print: To vote for a person, darken or shade in the oval that precedes the number assigned to the person's name in the proper column. For electronic voting systems, print: To vote for a person, touch the screen (or press the button) in the location indicated.

Vote for one (1) only

Representative in Congress

☐ (1) AB _____☐ (2) CD _____☐ (3) EF _____☐ (4) GH _____

(b) The offices with candidates for nomination shall be placed on the primary election ballot in the following order:

(1) Federal and state offices:

(A) President of the United States.

(B) United States Senator.

(C) Governor.

(D) United States Representative.

(2) Legislative offices:

(A) State senator.

(B) State representative.

(3) Circuit offices and county judicial offices:

(A) Judge of the circuit court, and unless otherwise specified under IC 33, with each division separate if there is more than one (1) judge of the circuit court.

(B) Judge of the superior court, and unless otherwise specified under IC 33, with each division separate if there is more than one (1) judge of the superior court.

(C) Judge of the probate court.

(D) Judge of the county court, with each division separate, as required by IC 33-30-3-3.

(E) Prosecuting attorney.

(F) Circuit court clerk.

(4) County offices:

(A) County auditor.

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- 1 (B) County recorder.
 2 (C) County treasurer.
 3 (D) County sheriff.
 4 (E) County coroner.
 5 (F) County surveyor.
 6 (G) County assessor.
 7 (H) County commissioner (for elections before 2012).
 8 **(I) County chief executive officer (as provided in**
 9 **IC 36-2-2.5 for elections in 2012 and thereafter).**
 10 **⊕ (J) County council member.**
 11 (5) Township offices:
 12 (A) Township assessor.
 13 (B) Township trustee.
 14 (C) Township board member.
 15 (D) Judge of the small claims court.
 16 (E) Constable of the small claims court.
 17 (6) City offices:
 18 (A) Mayor.
 19 (B) Clerk or clerk-treasurer.
 20 (C) Judge of the city court.
 21 (D) City-county council member or common council member.
 22 (7) Town offices:
 23 (A) Clerk-treasurer.
 24 (B) Judge of the town court.
 25 (C) Town council member.
 26 (c) The political party offices with candidates for election shall be
 27 placed on the primary election ballot in the following order after the
 28 offices described in subsection (b):
 29 (1) Precinct committeeman.
 30 (2) State convention delegate.
 31 (d) The following offices and public questions shall be placed on the
 32 primary election ballot in the following order after the offices described
 33 in subsection (c):
 34 (1) School board offices to be elected at the primary election.
 35 (2) Other local offices to be elected at the primary election.
 36 (3) Local public questions.
 37 (e) The offices and public questions described in subsection (d)
 38 shall be placed:
 39 (1) in a separate column on the ballot if voting is by paper ballot;
 40 (2) after the offices described in subsection (c) in the form
 41 specified in IC 3-11-13-11 if voting is by ballot card; or
 42 (3) either:

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1 (A) on a separate screen for each office or public question; or
 2 (B) after the offices described in subsection (c) in the form
 3 specified in IC 3-11-14-3.5;
 4 if voting is by an electronic voting system.
 5 (f) A public question shall be placed on the primary election ballot
 6 in the following form:

7 (The explanatory text for the public question,
 8 if required by law.)

9 "Shall (insert public question)?"

10 ☐ YES

11 ☐ NO

12 SECTION 3. IC 3-10-2-13 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. The following
 14 public officials shall be elected at the general election before their
 15 terms of office expire and every four (4) years thereafter:

- 16 (1) Clerk of the circuit court.
- 17 (2) County auditor.
- 18 (3) County recorder.
- 19 (4) County treasurer.
- 20 (5) County sheriff.
- 21 (6) County coroner.
- 22 (7) County surveyor.
- 23 (8) County assessor.
- 24 (9) County commissioner **(for elections before 2012).**
- 25 **(10) County chief executive officer (as provided in IC 36-2-2.5**
- 26 **for elections in 2012 and thereafter).**
- 27 ~~(10)~~ **(11)** County council member.
- 28 ~~(11)~~ **(12)** Township trustee.
- 29 ~~(12)~~ **(13)** Township board member.
- 30 ~~(13)~~ **(14)** Township assessor.
- 31 ~~(14)~~ **(15)** Judge of a small claims court.
- 32 ~~(15)~~ **(16)** Constable of a small claims court.

33 SECTION 4. IC 3-11-2-12, AS AMENDED BY P.L.2-2005,
 34 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2008]: Sec. 12. The following offices shall be placed on the
 36 general election ballot in the following order:

- 37 (1) Federal and state offices:
- 38 (A) President and Vice President of the United States.
- 39 (B) United States Senator.
- 40 (C) Governor and lieutenant governor.
- 41 (D) Secretary of state.
- 42 (E) Auditor of state.

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- 1 (F) Treasurer of state.
- 2 (G) Attorney general.
- 3 (H) Superintendent of public instruction.
- 4 (I) United States Representative.
- 5 (2) Legislative offices:
- 6 (A) State senator.
- 7 (B) State representative.
- 8 (3) Circuit offices and county judicial offices:
- 9 (A) Judge of the circuit court, and unless otherwise specified
- 10 under IC 33, with each division separate if there is more than
- 11 one (1) judge of the circuit court.
- 12 (B) Judge of the superior court, and unless otherwise specified
- 13 under IC 33, with each division separate if there is more than
- 14 one (1) judge of the superior court.
- 15 (C) Judge of the probate court.
- 16 (D) Judge of the county court, with each division separate, as
- 17 required by IC 33-30-3-3.
- 18 (E) Prosecuting attorney.
- 19 (F) Clerk of the circuit court.
- 20 (4) County offices:
- 21 (A) County auditor.
- 22 (B) County recorder.
- 23 (C) County treasurer.
- 24 (D) County sheriff.
- 25 (E) County coroner.
- 26 (F) County surveyor.
- 27 (G) County assessor.
- 28 (H) County commissioner (for elections before 2012).
- 29 **(I) County chief executive officer (as provided in**
- 30 **IC 36-2-2.5 for elections in 2012 and thereafter).**
- 31 ~~(J)~~ **(J)** County council member.
- 32 (5) Township offices:
- 33 (A) Township assessor.
- 34 (B) Township trustee.
- 35 (C) Township board member.
- 36 (D) Judge of the small claims court.
- 37 (E) Constable of the small claims court.
- 38 (6) City offices:
- 39 (A) Mayor.
- 40 (B) Clerk or clerk-treasurer.
- 41 (C) Judge of the city court.
- 42 (D) City-county council member or common council member.

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- (7) Town offices:
- (A) Clerk-treasurer.
 - (B) Judge of the town court.
 - (C) Town council member.

SECTION 5. IC 36-1-2-5 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2008]: Sec. 5. (a) "Executive" means:

- (1) **except as provided in subsection (b), the** board of commissioners, for a county not having a consolidated city;
- (2) **the** mayor of the consolidated city, for a county having a consolidated city;
- (3) **the** mayor, for a city;
- (4) **the** president of the town council, for a town;
- (5) **a** trustee, for a township;
- (6) **the** superintendent, for a school corporation; or
- (7) **the** chief executive officer, for any other political subdivision.

(b) "Executive", **after December 31, 2012, means the chief executive officer elected under IC 3-10-2-13 for a county not having a consolidated city.**

SECTION 6. IC 36-1-2-9, AS AMENDED BY P.L.186-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. "Legislative body" means: ~~the~~

- (1) **before January 1, 2013, the** board of county commissioners, for a county not subject to IC 36-2-3.5 or IC 36-3-1;
- (2) **the** county council, for a county subject to IC 36-2-3.5 **(before January 1, 2013) or IC 36-2-3.7 (after December 31, 2012);**
- (3) **the** city-county council, for a consolidated city or county having a consolidated city;
- (4) **the** common council, for a city other than a consolidated city;
- (5) **the** town council, for a town;
- (6) **the** township board, for a township;
- (7) **the** governing body of any other political subdivision that has a governing body; or
- (8) **the** chief executive officer of any other political subdivision that does not have a governing body.

SECTION 7. IC 36-1-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) If there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner.

(b) If there is no constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must either:

- (1) if the unit is a county or municipality, adopt an ordinance

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- prescribing a specific manner for exercising the power;
 (2) if the unit is a township, adopt a resolution prescribing a specific manner for exercising the power; or
 (3) comply with a statutory provision permitting a specific manner for exercising the power.

(c) An ordinance under subsection (b)(1) must be adopted as follows:

- (1) In a municipality, by the legislative body of the municipality.
 (2) In a county subject to IC 36-2-3.5 (**before January 1, 2013**), **IC 36-2-3.7 (after December 31, 2012)**, or IC 36-3-1, by the legislative body of the county.
 (3) In any other county, by the executive of the county.

(d) A resolution under subsection (b)(2) must be adopted by the legislative body of the township.

SECTION 8. IC 36-2-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) This chapter applies to all counties not having a consolidated city.

(b) This chapter expires December 31, 2012.

SECTION 9. IC 36-2-2.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 2.5. County Chief Executive Officer

Sec. 1. Except as specifically provided, this chapter applies after December 31, 2012, to each county that does not have a consolidated city.

Sec. 2. As used in this chapter, "chief executive officer" means the chief executive officer elected under IC 3-10-2-13 in 2012 and every four (4) years thereafter.

Sec. 3. In a county subject to this chapter:

- (1) the voters of the county:
 (A) shall elect a chief executive officer; and
 (B) shall not elect a board of county commissioners; under IC 3-10-2-13;
 (2) the board of county commissioners for the county is abolished January 1, 2013; and
 (3) the term of each county commissioner serving on December 31, 2012, expires at the end of that day.

Sec. 4. (a) All powers and duties of the county that are executive or administrative in nature shall be exercised or performed by the chief executive officer, except to the extent that these powers and duties are expressly assigned by law to another elected or appointed officer.

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(b) After December 31, 2012, any reference:

(1) in the Indiana Code;

(2) in the Indiana Administrative Code; or

(3) in an ordinance or a resolution;

to the board of commissioners as it pertains to a county shall be considered a reference to the chief executive officer of the county. After December 31, 2012, any reference in the Indiana Code related to the executive powers and duties of the board of county commissioners shall, for purposes of a county subject to this chapter, be considered a reference to the chief executive officer of the county.

(c) The county council has the legislative powers and duties of the county as provided in IC 36-2-3.7.

Sec. 5. The chief executive officer shall do the following:

(1) Report on the condition of the county before March 1 of each year to the county legislative body and to the residents of the county.

(2) Recommend before March 1 of each year to the county legislative body any action or program the chief executive officer considers necessary for the improvement of the county and the welfare of county residents.

(3) Submit to the county legislative body an annual budget in accordance with IC 36-2-5.

(4) Establish the procedures to be followed by all county departments, offices, and agencies under the chief executive officer's jurisdiction, to the extent these procedures are not expressly assigned by law to another elected or appointed officer.

(5) Administer all statutes, ordinances, and regulations applicable to the county, to the extent the administration of these matters is not expressly assigned by law to another elected or appointed officer.

(6) Supervise the care and custody of all county property.

(7) Supervise the collection of revenues and control all disbursements and expenditures, and prepare a complete account of all expenditures, to the extent these matters are not expressly assigned by law to another elected or appointed officer.

(8) Review, analyze, and forecast trends for county services and finances and programs of all county governmental entities, and report and recommend on these to the county legislative body by March 15 of each year.

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(9) Negotiate contracts for the county.

(10) Make recommendations concerning the nature and location of county improvements, and provide for the execution of those improvements.

(11) Supervise county administrative offices, except for the offices of elected officers.

(12) Approve or veto ordinances passed by the county legislative body in the manner prescribed by section 7 of this chapter.

(13) Perform other duties and functions that are assigned to the chief executive officer by statute or ordinance.

Sec. 6. The chief executive officer may do any of the following:

(1) Order any department, office, or agency under the chief executive officer's jurisdiction to undertake any task for another department, office, or agency under the chief executive officer's jurisdiction on a temporary basis, if necessary for the proper and efficient administration of county government.

(2) Establish and administer centralized budgeting, centralized personnel selection, and centralized purchasing.

Sec. 7. Notwithstanding IC 36-2-2-1(b), the chief executive officer shall approve or veto ordinances passed by the county legislative body in the manner prescribed by IC 36-2-4-8.

Sec. 8. Notwithstanding any other law, if a statute requires a county executive to take an executive action by ordinance or resolution, a chief executive officer shall instead take the action by issuing an executive order.

SECTION 10. IC 36-2-3.5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 7. This chapter expires December 31, 2012.**

SECTION 11. IC 36-2-3.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 3.7. County Council as the County Legislative Body

Sec. 1. This chapter applies after December 31, 2012, to each county that does not have a consolidated city.

Sec. 2. As used in this chapter, "chief executive officer" means the chief executive officer of a county elected under IC 3-10-2-13 in a county subject to IC 36-2-2.5.

Sec. 3. The executive and legislative powers of a county are divided between separate branches of county government. A power belonging to one (1) branch of county government may not be

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exercised by the other branch of county government.

Sec. 4. (a) The county council elected under IC 36-2-3 is the county legislative body as well as the county fiscal body.

(b) The chief executive officer is the county executive of the county. The chief executive officer of the county has the executive and administrative powers and duties of the county as provided in IC 36-2-2.5.

Sec. 5. (a) All powers and duties of the county that are legislative in nature shall be exercised or performed by the county council functioning as the county legislative body.

(b) The county council has the same legislative powers and duties that the county board of commissioners in the county had before the county board of commissioners was abolished.

Sec. 6. The county council may do any of the following:

(1) Establish committees that are necessary to carry out the county council's functions.

(2) Employ legal and administrative personnel necessary to carry out the county council's functions.

(3) Pass all ordinances, orders, resolutions, and motions for the government of the county, in the manner prescribed by IC 36-2-4.

(4) Receive gifts, bequests, and grants from public or private sources.

(5) Conduct investigations into the conduct of county business for the purpose of correcting deficiencies and ensuring adherence to law and county ordinances and policies.

(6) Establish, by ordinance, new county departments, divisions, or agencies whenever necessary to promote efficient county government.

SECTION 12. IC 36-2-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) An ordinance, order, or resolution is considered adopted when it is signed by the presiding officer. If required, an adopted ordinance, order, or resolution must be promulgated or published according to statute before it takes effect.

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published once each week for two (2) consecutive weeks, according to IC 5-3-1. However, if such an ordinance is adopted by the legislative body of a county subject to IC 36-2-3.5 (before January 1, 2013) or IC 36-2-3.7 (after December 31, 2012) and there is an urgent necessity requiring its immediate effectiveness, it need not be published if:

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- (1) the county executive proclaims the urgent necessity; and
 (2) copies of the ordinance are posted in three (3) public places in each of the districts of the county before it takes effect.

(c) In addition to the other requirements of this section, an ordinance or resolution passed by the legislative body of a county subject to IC 36-2-3.5 (**before January 1, 2013**) or IC 36-2-3.7 (**after December 31, 2012**) is considered adopted only if it is:

- (1) approved by signature of a majority of the county executive;
 (2) neither approved nor vetoed by a majority of the executive, within ten (10) days after passage by the legislative body; or
 (3) passed over the veto of the executive by a two-thirds (2/3) vote of the legislative body, within sixty (60) days after presentation of the ordinance or resolution to the executive.

(d) After an ordinance or resolution passed by the legislative body of a county subject to IC 36-2-3.5 (**before January 1, 2013**) or IC 36-2-3.7 (**after December 31, 2012**) has been signed by the presiding officer, the county auditor shall present it to the county executive, and record the time of the presentation. Within ten (10) days after an ordinance or resolution is presented to it, the executive shall:

- (1) approve the ordinance or resolution, by signature of a majority of the executive, and send the legislative body a message announcing its approval; or
 (2) veto the ordinance or resolution, by returning it to the legislative body with a message announcing its veto and stating its reasons for the veto.

(e) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(f) An ordinance increasing a building permit fee on new development must:

- (1) be published:
 (A) one (1) time in accordance with IC 5-3-1; and
 (B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and
 (2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

SECTION 13. IC 36-9-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. For purposes of this chapter, the following are considered the governing bodies of their respective eligible entities:

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(1) Board of commissioners, for a county not subject to IC 36-2-3.5 **(before January 1, 2013)** or IC 36-3-1.

(2) County council, for a county subject to IC 36-2-3.5 **(before January 1, 2013) or IC 36-2-3.7 (after December 31, 2012).**

(3) City-county council, for a consolidated city or county having a consolidated city.

(4) Common council, for a city other than a consolidated city.

(5) Town council, for a town.

(6) Trustee and township board, for a civil or school township.

(7) Board of school trustees, board of school commissioners, or school board, for a school corporation.

(8) Board of trustees, for a health and hospital corporation.

SECTION 14. [EFFECTIVE JULY 1, 2008] **(a) The legislative services agency shall prepare legislation for introduction in the 2009 regular session of the general assembly to organize and correct statutes affected by this act, if necessary.**

(b) This SECTION expires January 1, 2010.

SECTION 15. [EFFECTIVE JULY 1, 2008] **(a) This SECTION applies to each county that does not have a consolidated city.**

(b) Notwithstanding any other provision, in a county subject to this SECTION a county chief executive officer shall be elected at the November 2012 general election. The term of office of the initial county chief executive officer:

(1) is four (4) years; and

(2) begins January 1, 2013.

(c) The term of each county commissioner serving on December 31, 2012, expires at the end of that day.

(d) This SECTION expires July 1, 2014.

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